82-560

Office - Supreme Court, U.S.
FILED
SEP 30 1982
ALEXANDER L. STEVAS
CLERK

NO.
IN THE
SUPREME COURT OF THE UNITED STATES

PETER KANELOPOULOS

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MARVIN D. MILLER, Record Counsel
117 N. Fairfax Street
Alexandria, Virginia 22314
(703)836-7440

JAY COLANGELO
117 N. Fairfax Street
Alexandria, Virginia 22314
(703)836-7440

QUESTION PRESENTED

Does association with individuals involved in a marijuana transaction, in and of itself, satisfy the constitutional requirement of proof beyond a reasonable doubt of possession of the marijuana involved in the transaction?

TABLE OF CONTENTS

	PAGE
QUESTIONS PRESENTED.....	i
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES.....	iii
OPINIONS BELOW	1
JURISDICTION	2
STATUTORY & CONSTITUIONAL PROVISIONS	2
STATEMENT OF THE CASE.....	4
REASONS FOR GRANTING THE WRIT	14
CONCLUSION	25
CERTIFICATE OF SERVICE.....	28

APPENDIX

A. United States v. Kelly, ____F.2d____(5th Cir. 1982) A-1

B. Entry of Judgment, United States v. Kelly, United States District Court (M.D. L.A. 4 June 1980)..... ..... A-19

c. Stipulated Testimony of Special Agent Ken Feldman A-21

TABLE OF AUTHORITIES

PAGE

CASES

Glasser v. United States,
315 U.S. 60 (1942) 14,15

In re Winship,
397 U.S. 358 (1970)..... 14

Lewis v. United States,
420 F.2d 1089 (10th Cir.1970) .. 21

Mullaney v. Wilbur,
421 U.S. 684 (1975)..... 14

United States v. Alfrey,
620 F. 2d 551 (5th Cir.),
cert. denied, 449 U.S. 938(1980) 15

United States v. Batimana,
623 F. 2d 1366 (9th Cir. 1980)... 23

United States v. Bonham,
477 F.2d 1137 (3d Cir. 1973)
(en banc) 24

United States v. Box,
530 F.2d 1258 (5th Cir. 1976) .. 21

United States v. Brumley,
560 F.2d 1268 (5th Cir. 1977).. 20

United States v. DiRe,
332 U.S. 581(1948)..... 24

United States v. Ferg,
504 F.2d 914(5th Cir. 1974).... 22

CASES PAGE

United States v. Holland,
144 U.S. App. D.C. 225, 445
F.2d 701 (D.C. Cir. 1971)... 24

United States v. Martinez,
555 F. 2d 1269 (5th Cir. 1977) 21

United States v. Ocanas,
628 F. 2d 353 (5th Cir. 1980)... 23

United States v. Tonelli,
577 F. 2d 194 (3d Cir. 1978)... 20

United States v. Watkins,
171 U.S.App. D.C. 158,513
F.2d 294(D.C. Cir. 1975)..... 23

CONSTITUTION OF THE UNITED STATES

FIRST AMENDMENT 14

FIFTH AMENDMENT.....14

NO.

IN THE

SUPREME COURT OF THE UNITED STATES

PETER KANELOPOULOS

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner Peter Kanelopoulos requests that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit affirming his conviction in the United States District Court for the Middle District of Louisiana of possession with intent to distribute marijuana.

OPINION BELOW

The opinion of the court of appeals, not yet officially reported, is printed in Appendix A. The district court judgment, which was not officially reported is printed

in Appendix B.

JURISDICTION

The judgment of the court of appeals was issued on August 9, 1982. This Petition is timely filed. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Constitution, Amendment I:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

United States Constitution, Amendment V:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

21 U.S.C. §841 (a)(1):

(a) Except as authorized by this sub-chapter it shall be unlawful for any person knowingly or intentionally -

(1) to manufacture, distribute, or dispense or possess with intent to manufacture, distribute or dispense, a controlled substance.

STATEMENT OF THE CASE

Peter Kanelopoulos was tried on the single charge of possessing with intent to distribute approximately 2,010 pounds of marijuana. On 4 June 1980, the trial court, sitting without a jury, found the Defendant guilty after considering agreed, written stipulations of fact and exhibits.

Petitioner, Peter Kanelopoulos, appealed his conviction for possession with intent to distribute marijuana on the ground that the evidence was insufficient to establish his guilt beyond a reasonable doubt. His conviction was affirmed by the Fifth Circuit Court of Appeals.

According to the agreed stipulation of facts: one Peter Weyland agreed to purchase a quantity of

marijuana in Baton Rouge, Louisiana. One James Orrell, one of Weyland's employees met with an undercover Drug Enforcement Agent named Feldman and a Drug Enforcement Agency informant named Swift on 11 May 1979 in Springfield, Virginia. At that meeting Orrell told Feldman and Swift that a Winnebago camper and pickup truck would be driven to Baton Rouge, Louisiana to pick up a load of marijuana for Weyland.

A short time after that meeting, the three men left for Baton Rouge, Louisiana with Orrell in the Winnebago and Agent Feldman and Swift in a Ford pickup truck. During the course of the trip, Orrell stopped only for food and fuel or to telephone Peter Weyland. Orrell made approximately six telephone calls

to Weyland during the trip from Washington D.C. to Baton Rouge, Louisiana. In one of these telephone calls, Orrell was informed and reported to Feldman that the marijuana was of high quality and that Weyland was paying a high price for it.

The Winnebago which Orrell was driving had been purchased by Weyland through Orrell and was registered in Weyland's name at the time it was seized by the Drug Enforcement Agency. It had been modified to increase its load bearing capacity while appearing normal.

The two vehicles and three men, followed by surveilling DEA agents arrived in Baton Rouge, Louisiana, at approximately 6:15 a.m. on 12 May 1979. They went to a Ramada Inn where Orrell checked into one room

under an assumed named with Swift and Feldman checking into another room.

At approximately 6:40 a.m., Agent Feldman left the motel and drove the Winnebago across the street to a gas station. When he returned to the motel, he observed an individual later identified as Dana Cheney enter Orrell's room. The time of this observation is not known.

Orrell told Feldman not to come into that room since the "persons" inside did not want to be seen. The room had not been under surveillance and who, besides Dana Cheney comprised the "other persons" is not known.

Feldman left the area of the motel room and went to the coffee shop for an unknown period of time. When Feldman left the coffee shop and returned to the vicinity of the room

he noticed Peter Kanelopoulos enter Orrell's room. At 8:00 a.m., Agent Feldman telephoned DEA Agent Jack Redford and informed him that he had seen Cheney and Kanelopoulos enter Orrell's room. Twenty minutes after this call, at 8:20 a.m., Orrell informed Feldman and Swift that the load was smaller than expected and that they would not be needed to drive part of it back to Washington D.C. They were each to receive $1,000 for making the trip and were given $200 cash for expenses on the return trip. They were also informed that the "stash house" was only five minutes away and that loading would take about twenty minutes. As soon as the loading was completed, Orrell said he would notify them.

The telephone in Orrell's room was not monitored and there is no information

available regarding telephone calls made from or received by that room. Since the room was not under surveillance, it is unknown when the "other" persons" left that room nor is the identity of anyone other than Cheney and Kanelopoulos established.

When the Winnebago left the motel, it was later observed on Hoo Shoo Too Road parked behind a red and white automobile. The time was 9:00 a.m. The make, model, or license plate number of this vehicle is not known. The red and white vehicle had two occupants and one was observed standing outside of the Winnebago talking to the Winnebago's occupants. The identity of that individual and the identity of the red and white automobile 's

passenger was not learned by the police. The automobile left the scene and returned later at which time the Winnebago followed it to a parking lot. At the parking lot, the driver of the red and white automobile entered the Winnebago which then went to a house on Arnold Lane. The automobile and its passenger were not followed and their actions are unknown.*/

When the Winnebago arrived at Arnold Lane, there were several unidentified white males present. The Winnebago remained at that address for approximately twenty minutes, after which it went to a service station where Orrell placed a telephone call informing Feldman that he had the load and was en route

*/Not one of the law enforcement officers in the surveillances conducted in this case ever identified Peter Kanelopoulos as being in or near Peter Weyland's Winnebago, the red and white automobile or the Arnold Lane house.

back to Washington D.C.

The Winnebago was followed by police agents until it was stopped and its occupants, James Orrell and Dana Cheney, were removed and arrested. A search of the Winnebago revealed the 2,010 pounds of marijuana.

After the marijuana was seized, the Arnold Lane residence was placed under surveillance. It's owner, Anthony Kelly, his wife, and his child were identified leaving the residence. Thereafter, the residence was secured but the police found no one present at that time. A search warrant was executed and approximately 120 pounds of marijuana were seized.

As for Peter Kanelopoulos, his name was signed on a contract for a rental car

the same day as the seizure. "However," as stated in the opinion below, "Kanelopoulos' signature was not verified by a handwriting expert."*/ A red and white Dodge Magnum automobile whose license plates matched that on the rental contract was observed by a state trooper several days after the Winnebago seizure.

Peter Kanelopoulos was seen later on the day of the seizure deplaning from a flight in Washington D.C. which had originated in Baton Rouge, Louisiana with a lay-over in Atlanta, Georgia. His name was not on the passenger list. Despite the lack of evidence connecting Peter Kanelopoulos to the Winnebago, the

*/This is different than the signature of Peter Weyland, whose registration in the hotel room in Baton Rouge was verified by a handwriting expert. Peter Kanelopoulos handwriting tests were not used by the prosecution, nor were they made available to the defense.

Arnold Lane residence, Peter Weyland, or the marijuana, he was convicted of possessing the 2,010 pounds of marijuana with the intent to distribute it and his conviction was affirmed by the circuit court. He now faces a prison sentence and a fine.

REASONS FOR GRANTING THE WRIT

THE COURT SHOULD RESOLVE WHETHER A CONVICTION CAN BE UPHELD WHERE GUILT IS ASSUMED FROM ASSOCIATION WITH INDIVIDUALS INVOLVED IN A MARIJUANA TRANSACTION, BUT WITHOUT PROOF BEYOND A REASONABLE DOUBT.

The opinion below merits review because it violates the First Amendment right of freedom of association and the due process requirement of the Fifth Amendment that evidence of guilt must be established as to each and every element of the offense beyond a reasonable doubt. Mullaney v. Wilbur, 421 U.S. 684 (1975); In re Winship, 397 U.S. 358 (1970). The government did not present sufficient evidence to prove that Peter Kanelopoulos was guilty of possession with intent to distribute marijuana.

When reviewing the sufficiency of the evidence, the evidence must be taken in a light most favorable to the government and the verdict sustained if there is "substantial evidence" to support it. Glasser v.

United States, 315 U.S. 60, 80 (1942). If, however, after reviewing the evidence in the light most favorable to the government, "reasonable minds could conclude that the evidence is inconsistent with any reasonable hypothesis of the accused's innocence" then he must be found not guilty. United States v. Alfrey, 620 F.2d 551, 555 (5th Cir.), cert. denied, 449 U.S. 938 (1980); Glasser, supra at 80.

Giving the government the benefit of all reasonable inferences in this case, it remains clear that the guilt of the Petitioner was not established beyond a reasonable doubt, to the exclusion of all reasonable hypotheses of innocence.

At the very most, the government proved that the Petitioner was in the hotel room of a person (Orrell) involved in transporting a large quantity of marijuana in a Winnebago; that the

Petitioner rented a red and white Dodge Magnum automobile on the day of the marijuana seizure; that a red and white automobile rendezvoused with the Winnebago prior to it being loaded with the marijuana; and that the Petitioner flew from Baton Rouge to Washington D.C. a short time after the seizure of the Winnebago and was not listed as a passenger. Even if the red and white car rented by the Petitioner was the same red and white vehicle which met with the Winnebago, Petitioner was not identified as the "white male" who conversed with the Winnebago's occupants or the driver who entered the Winnebago in the parking lot.

Because Orrell had registered at the hotel under an assumed name, it can be inferred that some arrangment or communication was made enabling the Petitioner to find the room. However, evidence that

the Petitioner met with Orrell prior to the time Orrell gained possession of the marijuana and that the Petitioner later returned to Washington D.C. with his name omitted from the passenger list was not sufficient to prove his dominion and control of the 2010 pounds of marijuana found in Weyland's Winnebago. Suspicion that he was somehow involved is not enough to establish possession.

Neither the district court nor the court of appeals limited their review to the evidence in the record however. Instead, guilt was assumed from facts not in evidence. The court disregarded various reasonable hypotheses consistent with Petitioner's innocence.

The basic assumption appears to be that Peter Kanelopoulos directed Orrell to the marijuana or told him about the size of the load. The opinion below

points out that Agent Feldman was informed that the load was smaller than expected and that he would not be needed shortly after Kanelopoulos entered Orrell's room. The court of appeals, however, has misread the facts; the evidence does not establish that Agent Feldman returned to the hotel at 8:15 a.m. and saw Dana Cheney, nor does it establish that shortly thereafter, Petitioner entered Orrell's room. In actuality, Agent Feldman's testimony was that he left the hotel at 6:40 a.m., drove the Winnebago across the street to a closed service station and returned at an undisclosed time. Obviously, however, he returned earlier than the court of appeals assumed because at 8:00 a.m., Agent Feldman informed Agent Rayford that Cheney and Kanelopoulos had entered the room (A. 29). Agent Feldman learned of the reduced load

at 8:20 a.m., not immediately after the Petitioner's appearance.

Moreover, as the court of appeals itself recognized, Cheney's appearance made it just as likely that he, rather than the Petitioner, was the source of the information regarding the change of cargo. slip. opinion at page A17 . It would be consistent with the evidence to infer that Weyland was the source of the information about how much marijuana he bought. It is clear that Weyland was in control of the entire operation and he and Orrell had been in frequent telephone contact during the trip. He owned the Winnebago, and Orrell was Weyland's employee. Everyone was ostensibly working for him. The evidence also establishes that Weyland was in a Baton Rouge hotel on the day in question. Weyland may have arrived at Orrell's room while Agent Feldman was at the service station or he may have

reached Orrell by telephone.

The court of appeals ignored evidence of those possibilities and assumed that Kanelopoulos was the source of the information, that the "red and white vehicle" which later met with the Winnebago was the same car rented by Petitioner, and apparently that the white male whom the Agents could not identify and who entered the Winnebago when it travelled to the stash house was Peter Kanelopoulos. Of course that white male could have been anyone including Cheney, Weyland or Kelly. (The owner of the stash house). For the purposes of a conviction though, it was assumed that Kanelopoulos and no one else was the "white male."

But "defendants may not be assumed into the penitentiary." United States v. Tonelli, 577 F. 2d 194, 200 (3d Cir. 1978), quoting United States v. Brumley,

560 F.2d 1268 (5th Cir. 1977). Similarly, as the Tenth Circuit Court of Appeals has held, the evidence must do more than raise a suspicion of guilt. Lewis v. United States, 420 F. 2d 1089 (10th Cir. 1970). The Fifth Circuit has stated the rule which it should have applied in this case:

> "If the conclusion that all hypothesis of innocence have been excluded could be reached only as a result of speculations or assumptions about matters not in evidence, then the verdict must be overturned."

United States v. Martinez, 555 F. 2d 1269, 1271 (5th Cir. 1977); United States v. Box, 530 F.2d 1258, 1267 (5th Cir. 1976).

It was the duty of the court below to consider whether the evidence excluded every reasonable hypothesis of innocence and established the guilt of the Petitioner beyond a reasonable doubt. The opinion below clearly lacks such consideration.

Like Feldman and Swift, the Petitioner may have been an intended driver who was

no longer needed because of the reduced load and instead of cash was given a plane ticket home in someone else's name. He may have been a messenger for Weyland or for Kelly, or for someone else entirely. He may even have been a prospective purchaser on his own who was squeezed out by Weyland. But even such involvement would not give him dominion and control over the marijuana seized from the Winnebago.

The government's burden was to prove beyond a reasonable doubt that Peter Kanelopoulos was guilty of possession with intent to distribute the 2,010 pounds of marijuana seized from the Winnebago. In order to be properly convicted, the government had to prove "...some nexus between the accused and the prohibited substance." United States v. Berg, 504 F.2d 914, 917 (5th Cir. 1974). There

is no evidence that the Petitioner ever directly possessed or controlled any marijuana, was in any way connected to or in the Winnebago where the marijuana was found, or at the Kelly house where the marijuana was loaded.

The opinion below asserts he was in constructive possession. This necessarily assumes he exercised dominion and control over the marijuana. See United States v. Ocanas, 628 F.2d 353 (5th Cir. 1980). These elements are not proved by the fact that Orrell acquired the marijuana sometime after Kanelopoulos arrived at his hotel room.

It is well settled that mere presence or assocation with individuals who have control or possession will not suffice to support a conviction for possession. United States v. Batimana, 623 F. 2d 1366 (9th Cir. 1980); United States v. Watkins, 171 U.S. App. D.C. 158,519 F.2d 294 (D.C. Cir. 1975); United

States v. Holland, 144 U.S. App. D.C. 225, 445 F. 2d 701 (D.C. Cir. 1971); see also United States v. DiRe, 332 U.S. 581, 593 (1948).

The Third Circuit, in an en banc decision, has held that constructive possession requires a greater showing than speculation that the accused exercised dominion and control over the substance in question. In United States v. Bonham, 477 F.2d 1137 (3d Cir. 1973) (en banc), two defendants were shown to share a bedroom in which controlled substances were secreted. Even though both were present and could have exercised dominion and control over the substance the conviction of the individual on appeal was reversed because it was based on speculation as to whether or not that defendant exercised such control.

The opinion below conflicts with these decisions of other circuits and of this Court establishing that speculation and

assumptions are no substitute for the requirement of proof beyond a reasonable doubt. The Petitioner was assumed to be guilty because the court below suspected he might be involved or have control. But the evidence shows that Weyland was the one in control. The evidence in the record establishes Weyland's contructive possession and Cheney and Orrell's actual possession. There is only speculation as to the Petitioner's guilt.

CONCLUSION

Petitioner recognizes that this case does not necessarily break new ground in the further reaches of the development of our criminal law. It is precisely for this reason, however, that this case ought to be considered by this Court. The lower court misapplied the facts and reached an erroneous conclusion about Petitioners'guilt. There must be a way to avoid the consequences of this erroneous conviction.

Giving the government every conceivable benefit from the evidence the most that can be said about Petitioner is that he met under suspicious circumstances with Weyland's employee, Orrell and with Cheney, that he rented a car which rendezvoused

with Weyland's Winnebago, and that he returned to Washington, D.C. from Baton Rouge under suspicious circumstances. These suspicions when piled together still do not establish that Peter Kanelopoulos had dominion and control over the marijuana which Weyland purchased and had transported for him in his Winnebago.

Nothing in the evidence indicates that Petitioner was Weyland's boss. Nothing in the record indicates that Petitioner was Kelly's boss. Nothing in the record indicates that Petitioner was an employee of either Weyland or Kelly. Even if Petitioner were working for Weyland, nothing in the record indicates that he was still doing that when Weyland obtained the marijuana and had it put

in his Winnebago. The same applies for Kelly.

Justice should be applied to the meek as well as the mighty, to the big case as well as to the little one. A little injustice is as devasting to our freedom as is a large one. For Justice is supposed to apply to all. We pray the writ be granted.

PETER KANELOPOULOS
By Counsel

MARVIN D. MILLER,
Record Counsel
117 N. Fairfax St.
Alexandria, Virginia 22314
(703)836-7440

JAY COLANGELO
117 N. Fairfax Street
Alexandria, Virginia 22314
(703)836-7440

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of September, 1982, three true and accurate copies of this Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit was mailed, first class, postage prepaid, to the Office of the Solicitor General, Department of Justice, Washington D.C.

HARVIN D. MILLER
Record Counsel

APPENDIX A

UNITED STATES of America
Plaintiff-Appellee,

v.

Anthony O. Kelly, Peter Kanelopoulos
Dana Cheney and James H. Orrell,
Defendants-Appellant

UNITED STATES of America
Plaintiff-Appellee

v.

Peter J. Weyland,
Defendant- Appellant,

Nos. 80-3745, 80-3789

UNITED STATES COURT OF APPEALS
Fifth Circuit

August 9, 1982

Defendants were convicted in the United States District Court for the Middle District of Louisiana at Baton Rouge, John V. Parker, Chief Judge, for violations of the Controlled Substances Act, and they appealed. The Court of Appeals, Coleman, Circuit Judge, held that :(1) search of recreational vehicle and ensuing discovery of marijuana did not violate Fourth Amendment, and such evidence was sufficient to support convictions of three defendants; (2) marijuana discovered in another defendants residence was not subject to suppression as being object of invalid search; and(3)circumstantial evidence was sufficient to support another defendant's conviction.

Affirmed.

1. Drugs and Narcotics - 123

Searches and Seizures - 7(20)

Search of recreational vehicle and ensuing discovery of marijuana did not violate Fourth Amendment, and evidence was sufficient to support convictions for violations of Controlled Substances Act. Comprehensive Drug Abuse Prevention and Control Act of 1970, §§101 et seq., 401(a)(1), 406, 21 U.S.C.A. §§801 et seq., 841(a)(1), 846; U.S.C.A. Const. Amend. 4.

2. Drugs and Narcotics - 185

After officers had stopped defendant's car as it left his residence, thus alerting him to what was going on, possibility that evidence would be destroyed provided exigent circumstances justifying officers' entry into house, pending receipt of search warrant and therefore, such search, during which 125 pounds of marijuana were seen but not seized until warrant was actually in hand, was valid. U.S.C.A. Const. Amend. 4.

3. Searches and Seizures - 7(1)

Warrantless entries into person's home are per se unreasonable but they may be justified where sufficient exigent circumstances exist.

4. Drugs and Narcotics - 73

Mere presence is insufficient to support conviction for violation of Controlled Substances Act. Comprehensive Drug Abuse Prevention and Control Act of 1970, §§101 et seq., 401(a)(1), 406, 21 U.S.C.A. §§801 et seq., 841 (a)(1), 846.

5. Drugs and Narcotics - 123

Circumstantial evidence of defendant's participation in transaction involving one ton of marijuana and, at least, his constructive possession of the contraband was sufficient to support conviction under Controlled Substances Act. Comprehensive Drug Abuse Prevention and Control Act of 1970, §§101 et seq., 401(a)(1), 406, 21 U.S.C.A. §§801 et seq., 841 (a)(1), 846.

Appeals from the United States District Court for the Middle District of Louisiana.

Before BROWN, COLEMAN, and RUBIN, Circuit Judges.

COLEMAN, Circuit Judge

The known actors in this one ton marijuana case were Peter J. Weyland, James Orrell, Dana Cheney, and Anthony O. Kelly. Another individual who was convicted of being a participant in the episode is Peter Kanelopoulos . All five have appealed their convictions and sentences for violations of the Controlled Substances Act of 1970, 21 U.S.C., Sections 841(a)(1) and 846. We affirm the convictions of all defendants on all accounts.

Facts

On May 10, 1979, Drug Enforcement Administration special agent Kenneth C. Feldman received a phone call from Benson Swift. Swift had acted as an informant for the DEA and had supplied information regarding the activities of Peter J. Weyland. During the phone call, Informant Swift told Agent Feldman of a proposed trip from Washington D.C. to the sourthern part of the United States to purchase a large quantity of marijuana for Weyland.

The next day, May 11, 1979, Feldman in his undercover capacity, met Swift and James Orrell at the Roy Rogers Restaurant in Springfield, Virginia. Orrell told Feldman and Swift that a Winnebago camper and a pickup truck were to be driven to Baton Rouge to pick up a "load."

Soon thereafter, the three men departed on the projected journey - Agent Feldman and Informer Swift in a Ford pickup truck and Orrell in the Winnebago mobile home, the two vehicles being followed by undercover DEA agents William Williams and Wallace Morgan in an automobile. These agents kept in contact with Feldman via a two-way radio.

For the seventeen hour trip to Baton Rouge, Orrell remained in the Winnebago the entire time. Swift and Feldman alternated between pickup truck and the Winnebago. Driving was done in rotation and the vehicles stopped only for food, for gasoline, or for Orrell to use the telephone. Orrell telephoned and talked with Weyland six times during the trip to Baton Rouge.

Weyland purchased the 1975 Winnebago in August 1978, and the vehicle was registered in his name at the time it was seized by the DEA agents. Weyland bought the Winnebago through Orrell, an employee of Weyland's sole proprietorship, Eager Beaver Auto Services of Alexandria, Virginia. Before buying the Winnebago, Weyland authorized and directed substantial modification of a private storage compartment secured by a lock door and modification of the rear suspension to increase the Winnebago's load bearing capacity.

On the afternoon of May 11, at a lunch stop in Knoxville, Tennessee, Orrell pointed out to Agent Feldman the raised rear end of the Winnebago and told him that the special suspension would allow the camper to sit normally when the expected load of four thousand pounds of marijuana was placed in it. Late that evening at a stop outside Jackson, Mississippi, after making a phone call, Orrell told Feldman that the marijuana was of extremely high quality and that Weyland was paying a very high price for it.

After these conversations with Orrell, Agent Feldman believed that money was on the Winnebago. While Orrell was driving, Feldman left the passenger seat and went to the bathroom in the rear of the Winnebago. In the bathroom, Feldman opened a closet and found a briefcase. When he opened the briefcase, there were fourteen stacks of twenties, fifties and hundreds which he initialled, along with the date, on the top and bottom bills. Although he did not count the money, he estimated it to be around a hundred thousand dollars. After replacing the briefcase, Feldman returned to his seat.

The two vehicles, followed by the surveilling DEA agents, reached Baton Rouge, Louisiana, at approximately 6:00 a.m. on the morning of May 12. Charles Bremer, a DEA agent assigned in Baton Rouge, saw the Winnebago at approximately 6:10 a.m., as it crossed Sherwood Forest Boulevard on Interstate 12, traveling west. He began mobile surveillance behind the two vehicles and followed them to the Ramada Inn on Airline. He thereafter watched the Winnebago at the Ramada Inn.

Orrell, Swift and Feldman went into the motel lobby. Feldman and Swift checked into room 123 and Orrell into room 125. Feldman looked over Orrell's shoulder and saw Orrell sign a false name to the register. Shortly after the men had gone to their rooms, Feldman left under the pretense of looking for gas and drove the Winnebago across the street to a service station which was closed. Adjacent to the station was the Days' Inn Motel where Feldman talked with DEA agent Williams. This agent did not enter the Winnebago. Feldman returned to the Ramada Inn at approximately 8:15 a.m.

Upon returning to the Ramada Inn, Feldman observed a man later identified by him as the defendant, Dana Cheney, enter Orrell's room, number 125. Orrell told Feldman not to come into the room since the persons inside did not want to be seen. Feldman went to the hotel coffee shop. After leaving the coffee shop and upon approaching Orrell's room, Feldman observed a person, later identified as Peter Kanelopoulos, enter Orrell's room.

Around 8:20 a.m., and after Kanelopoulos had entered the room, Orrell told Feldman that there would be only two thousand pounds of marijuana, rather than four thousand, therefore the pick-up truck with the camper on the back would not be needed. Orrell told Feldman and Swift that they would receive $1,000 for making the trip. Orrell gave Swift $200 for expenses on the return trip. Orrell also told them that he was going to leave in approximately twenty-five minutes and that it would

take five minutes to reach the place where the marijuana was and twenty minutes to load the Winnebago. He would take the short route back to the Washington D.C. area and would meet them on the highway so as to make the return trip together. Feldman suggested that once Orrell had loaded the Winnebago that Orrell call them at the motel. After Orrell left, Feldman called Agents Williams and Redford to notify them of the change of plans.

The Winnebago left the Ramada Inn at approximately 8:24 a.m. and was in a gasoline station until 8:51 a.m. At approximately 9:00 a.m. the Winnebago stopped next to another vehicle on Hooshootoo Road. The other vehicle a red and white car, contained two white males, but Special Agent Charles Bremer could not identify either its make or its license plate. The driver of the red and white car got out of his vehicle and spoke through the driver's window of the Winnebago to Orrell before returning to his car and leaving the scene. The Winnebago remained at the location for approximately thirty minutes, until the red and white car returned. Then both vehicles left and drove to a commercial location, which Bremer testified he believed to be a bank. The driver of the red and white car was observed to leave that vehicle and get in the Winnebago. The Winnebago was followed directly to 4445 Arnold Lane, in Baton Rouge, arriving there at approximately 9:45 a.m.

The Winnebago stayed at the Arnold

Lane address for approximately twelve minutes. Agents were watching the Arnold Lane address from a distance but they had an obstructed view because the nature of the location and the trees surrounding the premises. However, the agents saw several individuals moving near the Winnebago. After it left the residence, the Winnebago went to a service station where Orrell called Feldman to tell him that the marijuana had been loaded and the Winnebago was on its way to Washington D.C.

After receiving Orrell's phone call, Feldman and Swift stopped at the Days' Inn Motel across the highway from the Ramada Inn, to advise the DEA agents of what was happening. Feldman and Swift then left in the pickup truck in an attempt to try to catch the Winnebago and make an undercover arrest. While the Winnebago was traveling down the Interstate, it was under surveillance by both air and ground vehicles. During this same period of time, the house on Arnold Lane was left without official observation.

In an effort to get Orrell to stop, Feldman contacted the Winnebago by CB radio and told Orrell that the pickup was having overheating problems. Orrell told Feldman that the Winnebago would not stop for any reason. After a little more than an hour, Feldman caught up with the Winnebago, passed it, and stopped on the side of the highway. Feldman's breakdown ruse did not get the Winnebago to stop. As it passed, Feldman noticed that the Winnebago was now level.

Then Feldman contacted other agents to stop the Winnebago. It was approximately seventy-five miles from Baton Rouge when it was stopped at 11:18 a.m.

Once the Winnebago was stopped, Orrell and Cheney were searched and handcuffed and placed face up on the ground. Agents Redford and Howard searched inside the Winnebago. When Redford reached the locked door leading to the compartment containing two beds he asked for the key but Cheney and Orrell made no response. He then ordered that the door be opened with a tire iron. Once the door was opened, Redford saw large green plastic bags and cardboard around some, but not all, of the bags. The bags were completely sealed. Redfore took his pocket knife and cut into one of the bags. Upon discovering marijuana, Redford told Agent Bremer to place Orrell and Cheney under arrest and read them their Miranda rights. The Winnebago was taken to the State Police Troop Headquarters at Covington, Louisiana.

Upon discovery of the marijuana in Covington, surveillance was resumed on the Arnold Lane residence at 1:00 p.m. A car left the residence at 3:00 p.m. whereupon Louisiana State Trooper Crittenden was instructed by Trooper White to obtain identification of the driver and passenger. Crittenden used the fact that the car had no inspection sticker to pull it over and ask for identification. Anthony Kelly and his wife, owners of the Arnold Lane residence, were

in the car and explained why there was no inspection sticker. Crittenden did not give them a citation and they were allowed to to on their way. About thirty minutes after Kelly was stopped, the residence was searched. In securing the premises, the officers went into the house to check throughout the house, including closets, for people who might be hiding in the house. The door which Trooper Crittenden went through to enter the house was open and Trooper White announced taht they were the police. While securing the house, they entered a storeroom where there were several bales of marijuana. Crittenden testified that there was green vegetable matter showing through an opening in one of the bales which were in green plastic bags. At that time, Crittenden closed the door and the officers waited for the search warrant.

During the time that the house was secured, two men camed to the residence. They were watched, but not detained. In addition, Kelly's attorney came to the house. She entered and was watched by the officers. The search warrant arrived around 7:30 p.m. and Kelly, who had returned home, was arrested. In addition to the marijuana found at Arnold Lane, there was also an ashtray containing particles of cocaine.

As to Peter Kanelopoulos, his name was on a car rental contract signed by someone on the day of the seizure. However, Kanelopoulos' signature was not verified by a handwriting expert. The license plate number of the automobile

as it appeared in the rental contract was seen by a trooper on a red and white Dodge Magnum automobile several days after the Winnebago was seized. Later, on the same day of the seizure and arrests, Kanelopoulos was seen getting off a flight in Washington D.C. which had originated in Baton Rouge, Louisiana, with a stopover in Atlanta, Georgia. A check of the computerized list of passengers did not reveal the name of Kanelopoulos leading to the obvious inference that he had flown under an assumed named and had left the Baton Rouge area soon after he had been seen there.

THE SEARCH OF THE WINNEBAGO

This case was orally argued in New Orleans on November 2, 1981. This Court was aware that the Supreme Court had granted certiorari in United States v. Ross, ___ U.S. ____, 102 S.Ct. 386, 70 L.Ed. 2d 205(1981). Since the search of the Winnebago herein described, and the evidence obtained by that search, furnished the crucial point of attack for the appeals, we directed the Clerk to notify counsel that we would delay decision pending the guidance expected to result from the disposition of Ross. On June 1, 1982, Ross was decided, ___ U.S.____, 102 S.Ct. 2157, 73 L.Ed. 572

[1] We need not restate Ross. Suffice it to say, under the principles there set forth the search of the Winnebago and the ensuing discovery of the marijuana did not violate the Fourth Amendment. It necessarily follows that proof of guilt as to Weyland, Orrell and Cheney was overwhelming.

Their convictions are affirmed forthwith.

THE CASE AS TO KELLY'S HOUSE
4445 Arnold Lane

From the facts recited in the beginning of this opinion, the only place where the marijuana could have been loaded onto the Winnebago was at the Kelly house, 4445 Arnold Lane. Until it was actually done the government agents did not know in advance where the loading would take place. They saw the Winnebago leaving 4445 Arnold Lane at 9:57 a.m. That the Winnebago had the marijuana aboard was not established of their own personal knowledge until the vehicle was stopped near Covington at about 1:00 p.m. Between 9:57 and 1:00 o'clock no watch was maintained at the Arnold Lane residence. The agents had seen that there were three men in the Winnebago when it went to Arnold Lane and only two in it when it was stopped in the act of transporting a ton of marijuana.

At 1:30 p.m. an agent of the Drug Enforcement Administration met with the Assistant United States Attorney to prepare applications for a search warrant for the Arnold Lane house. This effort continued until about 5:30 p.m. The magistrate did not issue a search warrant until around 7:45 or about 8:00 o'clock.

In the meantime, about one o'clock the Louisiana state trooper who had been piloting the helicopter surveilling the Winnebago between

Baton Rouge and Covington returned to a place within sight of the Arnold Lane residence. At approximately 3:00 o'clock a man, a woman and a child left the Arnold Lane residence in an automobile. Trooper Crittenden stopped the automobile and obtained Kelly's identification. The women was Kelly's wife and the child was theirs. While Crittenden thus obtained Kelly's identification and learned whose house was involved, this also alerted Kelly that he was under suspicion and that some kind of investigation was under way. Therefore, at about 5:30 o'clock, with the approval of the Assistant United States Attorney, a state officer was directed to secure the premises at 4445 Arnold Lane but was told not to search the residence because a search warrant was then in the process of being obtained. The state officers then entered the residence and found no one present. While state troopers went from place to place in and outside the house checking for the possible presence of individuals who might be there, and armed, 125 pounds of marijuana was seen but not seized. The officers left it where it was until the search warrant came to the house. When the warrant was received, the 125 pounds of marijuana was seized and Kelly was arrested.

Kelly now complains that the marijuana should have been suppressed as being the object of an invalid search. He admits probable cause for a search but argues that no evidence of exigent circumstances justified the entry into the house and

its appendages pending the receipt of the search warrant.

We cannot agree with these contentions. This is not a case in which officers insensitive to the commands of the Fourth Amendment entered the house at their convenience and for their purposes to see what could be found. On the contrary, when the officers found out that Kelly's residence was the situs for the delivery of a ton of marijuana they immediately began, on a Saturday when federal offices are ordinarily closed, to obtain a search warrant. For over two hours the state trooper remained at a distance from the house, awaiting the arrival of the warrant. It turned out that it took a terribly long time to get a warrant on a Saturday, but the officers stood by until they stopped Kelly, found out he was the householder, and thus alerted him to what was going on. The officers were then instructed to move into the house, to see that no evidence was destroyed, and not to search it. While checking for individuals who might have been in and around the house, the marijuana was seen in plain view in a storage room, but not seized. When the warrant finally arrived, the contraband was seized.

[2] Taking the facts of this case by their four corners, looking into everything which was known to the law enforcement officers before and after the Winnebago arrived in Baton Rouge, together with what they certainly knew after it was stopped, it seems to us that exigent circumstances did exist. Had the $100,000 in contraband money, subject to confi-

scation, been left in the house? Had all the marijuana been loaded on the Winnebago? Left unsecured, any occupants in the house could easily have done away with portions or maybe all, of the evidence. What it all comes down to is that we believe the officers in good faith, did all they could do to obtain the required warrant. For reasons beyond their control they were a long time getting to it on a Saturday. They scrupulously refrained from seizing the marijuana until the warrant was actually in hand.

[3] It is certainly true that the warrantless entries into a person's home are per se unreasonable but they may be justified where sufficient exigent circumstances exist. See, e.g, Katz v. United States, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed. 2d 576 (1967), and Vale v. Louisiana, 399 U.S. 30,90 S.Ct. 1969, 26 L.Ed. 2d 409 (1970). The possibility that evidence will be destroyed has often been recognized as sufficient exigency to justify warrantless entry, even a search without waiting on a warrant, see, e.g., United States v. Edwards, 602 F.2d 458, 468 (1st Cir. 1979). Edwards cited cases which included our own decision in United States v. Gardner, 553 F.2d 946 (5th Cir. 1977), on which the Supreme Court denied certiorari, 434 U.S. 1011, 98 S.Ct. 722, 54 L.Ed 2d 753.

We hold that Kelly's Fourth Amendment rights were scrupulously observed as far as the facts, the mechanics, and the exigencies of the situation allowed. Under the appropriate Fourth Amendment standards

the entry of the house was reasonable. The seizure, of course, was supported by the warrant.

Kelly's conviction is affirmed.

Mr. Kanelopoulos

[4] As to this defendant, the government had to prove to a reasonable jury beyond a reasonable doubt and to the exclusion of every reasonable hypothesis consistent with innocence that he was, in fact, guilty, United States v. Doe, 664 F. 2d 546 (5th Cir. 1981). Moreover, mere presence is not enough, United States v. Scott, 678 F.2d 606(5th Cir. 1982).

We conclude, however, that within these standards, a reasonably minded jury (in this instance, the court sitting without a jury) could have returned a guilty verdict, as it did.

[5] The occupants of Orrell's room did not wish to be seen by others. Nevertheless, Kanelopoulos was readily admitted, not long before the marijuana was loaded at Kelly's. Orrell obviously knew how and where to get in touch with Kanelopoulos, very quickly after he arrived in Baton Rouge. Orrell had signed the motel register with a false name. Kanelopoulos could not have learned of this room number without either communication with someone who knew it or knowledge of the false name used in registering. In any event, soon after Kanelopoulos put in his appearance, Orrell told Feldman that only a ton of marijuana would be transported, not the two tons as previously

planned, and that the pickup truck would not be needed for transportation purposes. The jury might take into account the possibility that Orrell learned of this change of cargo from either Cheney or Kanelopoulos. A red and white automobile had twice met with the Winnebago by the roadside. A car of the same color had been rented on a contract carrying Kanelopoulos' name. It had been returned to the rental agency at 12:47 p.m., eighteen minutes before the defendant enplaned in Baton Rouge for Washington D.C., traveling under an assumed name. The flight stopped only in Atlanta and Kanelopoulos was seen leaving the flight in Washington at 5:20 p.m., Baton Rouge time. These activities, some surreptitious to a degree and others totally surreptitious executed directly with the marijuana runners, carry no earmarks of innocence. To the contrary, a reasonable trier of fact, looking also to the inferences reasonably to be drawn from the facts would be justified in believing that Kanelopoulos was up to his ears in this marijuana transaction. Indeed, he was on the ground before Orrell got there and no marijuana was acquired until Kanelopoulos conferred with Orrell and Cheney in the motel room from which the others were excluded. Then, when the stuff had been loaded on the Winnebago, Kanelopoulos speedily got out of town, returning to the Washington base of operations. This all points toward guilt and not toward innocence. No one link in this chain of circumstantial evidence was proof of Kanelopoulos' guilt. However, in considering whether his complicity was established beyond reasonable doubt

the jury was entitled to take into account each of these facts, and to evaluate them in the light of the great improbability that all of them taken together, would point in the wrong direction.

Kanelopoulos says, however, that this is insufficient to prove that he possessed the marijuana with intent to distribute it, the offense for which he was convicted. We disagree. From this record, the trial judge could infer beyond a reasonable doubt, as he did, that Orrell never had any marijuana in his possession until after he had met with Kanelopoulos and made his arrangements to acquire it at the Kelly house. Therefore, this defendant was at least in contructive possession of the contraband and was a vital cog in its distribution. The proof was not insufficient.

The judgment of the District Court is, as to all defendants,

AFFIRMED.

APPENDIX B
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

MINUTE ENTRY:
JUNE 4, 1980,
PARKER, C.J.

UNITED STATES OF AMERICA

VERSUS

CRIMINAL ACTION
NO. 79-49-B

ANTHONY O. KELLY, ET AL

******

This matter came on for trial as to defendant, Dana Cheney, on Count I; defendants James H. Orrell, and Peter Xanelopoulos, on Count III; and defendant, Anthony O. Kelly, on Count IV--Count I charging violation of 21 U.S.C. §846 and 18 U.S.C. §2; Count III charging violation of 21 U.S.C. §841(a)(1) and 18 U.S.C. §2; and Count IV charging a violation of 21 U.S.C. §841(a)(1). Defendants waived trial by jury and the matter was submitted to the Court upon written stipulations entered into between the government and defendants. The Court, having considered

the written stipulation and examined all of the exhibits offered and accepted in this cause, finds:

(1) Defendant, Dana Cheney, GUILTY as to Count I:

(2) Defendant, James H. Orrell, GUILTY as to Count III;

(3) Defendant, Peter Kanelopoulos, GUILTY as to Count III;

(4) Defendant, Anthony O. Kelly, GUILTY as to Count IV.

Defendants Cheney, Orrell, Kanelopoulos and Kelly are continued on bond previously posted and a pre-sentence investigation is hereby ordered as to each defendant. Defendants are to appear for sentencing upon notice.

UNITED STATES DISTRICT JUDGE

APPENDIX C

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA

versus CRIMINAL NO. 79-49-B

ANTHONY O. KELLY, ET AL

STIPULATED TESTIMONY OF SPECIAL AGENT KEN FELDMAN

It is stipulated by and between the United States of America and the undersigned defendants herein that if called to testify at trial, after being duly sworn, Special Agent Ken Feldman would testify as follows, subject to the objections previously urged in the motions to suppress evidence filed by the undersigned defendants.

1. Special Agent Ken Feldman is employed by the Drug Enforcement Administration (DEA) and has been so employed for over three years.

2. During his employment with DEA, he has had occasion to work in an undercover

capacity on twenty to thirty drug cases.

3. By prior arrangement, Feldman arrived at a Roy Rogers Restaurant at Springfield, Virginia, at approximately 1:13 a.m. on May 11, 1979, to discuss the possibility of Feldman serving as a driver for a load of marijuana which was to be picked up somewhere in the south and returned to the Washington D.C. area.

4. Feldman was introduced to the defendant James H. Orrell, by Benson Swift. Swift and Orrell were seated in a green and white Winnebago, pictures of which are marked as Government Exhibits 3-8, bearing Virginia dealer's tags UD-43-754. Swift and Orrell were looking at a road map as Feldman approached.

5. Virginia dealer's tag UD-43-754 is registered to "P.J. Weyland T/A Eager Beaver Auto Service, 1108 Orrnoco Street, Alexandria, Virginia 22314" (Government Exhibit 2).

6. Feldman and Swift exited the Winnebago and entered a green Ford pick-up truck with a "camper cover" in place over the bed of the truck. This truck bore Maryland license number N-82981, which license number is registered to James Harrision Orrell, III, 881 Azalea Drive, Rockville, Maryland.

7. It was agreed that the defendant Orrell would drive the Winnebago and be followed by Swift and Feldman in the pick-up.

8. At approximately 1:20 a.m. on May 11, 1979, the Winnebago and the pick-up left the restaurant and proceeded north on I-95, west on I-495, and finally south to Warrenton, Virginia, where the vehicles were re-fueled at approximately 2:20 a.m., May 11, 1979.

9. After re-fueling, both vehicles again proceeded south to Lexington, Virginia, where they stopped for food at a truck stop at approximately 4:30 a.m.

10. While at this truck stop, Orrell indicated and was disturbed by the fact, that an additional driver, whose identity was unknown to him, would be picked up at their destination in Baton Rouge, Louisiana.

11. The Winnebago, driven by Orrell and the pick-up driven by Feldman, departed the truck stop at approximately 5:15 a.m., and proceeded to Briston, Tennessee, where they again stopped for fuel.

12. Upon leaving Bristol Tennessee, Feldman rode in the Winnebago with Orrell and Swift drove the pick-up. Both vehicles proceeded to Knoxville, Tennessee, where they stopped for lunch at a Morrision's Cafeteria at approximately 12:30 p.m. on May 11, 1979.

13. Upon their arrival at the Morrison's Cafeteria, Orrell placed a long distance telephone call.

14. After eating lunch, outside of the Morrison's Cafeteria in the parking lot, Orrell pointed out to Feldman that the rear end of the Winnebago was raised by a special suspension so that the vehicle would not ride low when fully loaded. Feldman noted that in its unloaded condition, the rear end of the Winnebago was riding higher than the front end.

15. Feldman, Orrell, and Swift departed from the Morrison's and then drove to a Howard Johnson's Restaurant which was located across the street from the Cafeteria.

16. After entering the Howard Johnson's, Orrell made another long distance telephone call. After completing the call, Feldman, Orrell and Swift waited several minutes. The telephone rang, and Orrell answered it. After talking briefly, Orrell indicated that they could now leave.

17. Orrell, Swift and Feldman departed

the Howard Johnson's Restaurant at approximately 1:55 p.m. May 11, 1979. Feldman and Swift entered the pickup and Orrell drove the Winnebago.

18. Both vehicles proceeded to Nashville, Tennessee, where they stopped for fuel at approximately 5:20 p.m. on May 11, 1979.

19. About half way between Nashville and Memphis, Tennessee, both vehicles again stopped for fuel. Feldman suggested that since they (Feldman, Orrell and Swift) were all in need of sleep that they rest for the night. Orrell declined to stop since the transfer was set for dawn on May 12, 1979, the next morning.

20. Both vehicles proceeded through Memphis, Tennessee, and then proceeded south on Interstate 55.

21. At approximately 11:30 p.m. on May 11, between Jackson, Mississippi and

Memphis, Tennessee, both vehicles again stopped for fuel.

22. Again, Feldman complained to Orrell that they needed to rest. Orrell agreed, and said he would call Baton Rouge to inquire if a stop could be made.

23. Orrell and Feldman proceeded to a Holiday Inn nearby, where Orrell called telephone number (504)924-5000, room 601. Apparently, no one answered the telephone call.

24. While leaving the Holiday Inn, Orrell told Feldman that they would be paying a high price for the marijuana and that they would be picking up about 4,000 pounds. The large load made the Winnebago necessary.

25. Both vehicles then proceeded on to Jackson, Mississippi, arriving at approximately 2:30 a.m.

26. Orrell again stopped to telephone Baton Rouge. After the phone call, Orrell said that they would have to proceed directly to Baton Rouge without stopping to rest.

27. Both vehicles left the Jackson area, proceeded to Hammond,Louisiana, and then into the Baton Rouge area, arriving in the Baton Rouge area at approximately 6:15 a.m., May 12, 1979.

28. Orrell, driving the Winnebago, followed by Feldman and Swift in the pick-up proceeded to the Ramada Inn, 10330 Airline Highway. Orrell checked into Room 125, Feldman and Swift checked into Room 123. Government Exhibit 14 was filled out by Orrell in Feldman's presence.

29. Orrell went to a telephone in the motel lobby and placed a call.

30. At approximately 6:40 a.m., Feldman and Swift drove the Winnebago across the street to an Exxon Service Station. The

Winnebago contained no marijuana at this time, nor had Feldman observed any drugs in the Winnebago during the trip from the Washington D.C. area.

31. Upon returning to the hotel, Feldman observed a person later identified by him as the defendant, Dana Cheney, enterd Orrell's room number 125.

32. Orrell instructed Feldman to return to his room, since the person inside did not want to be seen. Feldman acknowledged this request, and went to the hotel coffee shop.

33. After leaving the coffee shop, and upon approaching Orrell's room, Feldman observed a person later identified by him as the defendant, Peter Kanelopoulos, enter Orrell's room.

34. At approximately 8:00 a.m., May 12, 1979, Feldman notified Special Agent Jack Redford, DEA, Baton Rouge, that he

had seen two persons later identified by him as the defendants Cheney and Kanelopoulos in Orrell's room.

35. At approximately 8:20 a.m., May 12, 1979, Orrell told Feldman that there was less marijuana than expected, and that his services would not be needed. Orrell told Feldman and Swift that they would each receive $1,000.00 for making the trip. Orrell gave Swift $200.00 for expenses on the trip back.

36. Orrell told Feldman that the "stash house" was only 5 minutes away and that loading would only take about 20 minutes. Orrell told Feldman that he would notify Feldman as soon as the loading was completed.

37. At approximately 10:05 a.m. on May 12, 1979, Orrell called Feldman and told him that they were loaded and on the way back to Washington D.C.

38. Feldman entered the green pickup truck and pursued the Winnebago. Upon catching up to the Winnebago, Feldman notified the other agents that the rear end of the Winnbago was riding "level," and since the Winnebago was equipped with heavy rear suspension, this indicated the presence of a heavy load.

This stipulation entered into with the consent of the Government and the Defendants this 17 day of March, 1980.

DONALD L. BECKNER
UNITED STATES ATTOR
NEY

C. MICHAEL HILL
ASSISTANT U.S. ATTONEY

JAMES ORRELL
Defendant

JAMES M. ROSS
LARRY TURNER
Attorneys for Defendant Orrell

DANA CHENEY,
Defendant

PETER KANELOPOULOS
defendant

JAMES BOREN
WILLIAM MOFFITT
FLOWERS MARK
Attorneys for
defendant Cheney

ANTHONY KELLY
defendant

MARVIN D. MILLER
W. MICHAEL STEMMONS
Attorneys for De-
fendant Kanelopoulos

J. MICHAEL SMALL
Attorney for de-
fendant Kelly